

Exhibit 4

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FBI - NEW YORK

STATIONER'S COPY OF THE ORIGINAL
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MEMORANDUM FOR THE DIRECTOR, FBI
FROM: SAC, NEW YORK (100-100000)
SUBJECT: [REDACTED]

October 15, 1978

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[illegible]

The extraordinary character of this case -- namely, that the biography of a public figure, as a private person, violates some rights belonging to his estate -- is far better to say the least, if such a claim were sustained, there could be no biography for at least as objective biographies (or only biographies authorized by the subjects thereof could be published). Our newspapers and magazines would also have to close their doors, for the heart of any newspaper or newsmagazine is the report of the statements and actions of such public figures, accompanied by their photographs.

Common sense tells us that such a notion is absurd on its face. For in this area, common sense and legal principles fully coincide. As discussed above, the law is quite clear that neither a "right of publicity" nor any other right gives a public figure or historian the right to object to the publication of such biographical materials. In considering further the specific claims made in this case, it may be helpful to review briefly the nature of the right of publicity relied upon by plaintiff and the law of privacy from which it derives.

A relatively new concept in the law, the right of privacy has developed slowly since the appearance in 1890 of a law review article by Samuel D. Warren and Louis D. Brandeis urging the recognition of such a right. See Warren & Brandeis, "The Right to Privacy," 4 *Harv. L. Rev.* 1937 (1890). The right of privacy is now recognized, in some degree, at least, by nearly all of the states. Prosser, *Law of Torts* 117, at 804 (4th ed. 1971).

In fact, the phrase "invasion of privacy" covers four separate though somewhat related torts, which Dean Prosser has labelled "intrusion," "public disclosure of private facts," "false light in the public eye" and "appropriation." Prosser's categorization and description of these four torts have been

the ordinary consumer, who is not an expert, other than being an owner of property of realness, is an individual's instance in the market that exists in the more and likeness of the product of this country to give him an exclusive right in the product, playing in a species of trade name, his own and not to be traded in the market. In 1907.

the "right of appropriation" - a right of appropriation
of resources which cannot be transferred and is to be the
basis of the right.

1. The Fourth Circuit, applying the "bright line" rule, found in Shaw v. Reno, 509 U.S. 630 (1993), that the plan had no "clearly defined" racial "separate" political group. Shaw v. Reno, 509 U.S. 630 (1993).

In New York, the right of privacy is a statutory right, set forth in sections 50 and 51 of the Civil Rights Law. A number of Federal courts have concluded that there is also a common-law right of privacy in New York. That conclusion was first reached by the Second Circuit in Haelan Laboratories, Inc. v. Topps, Chew and Gum, Inc., 702 F.2d 866 (2d Cir.), cert. denied, 445 U.S. 816 (1953), and has been followed in subsequent Federal court decisions.

The conclusion in these federal decisions that there is a common-law right of publicity in New York is, we believe,

mistakenly. The "common-law" right of privacy was created
precisely because the law could not find a right to privacy
that an individual had in common with society against the
commercial use of his name or likeness. Roberson v. Postoffice
Building Board, 170 N.E. 2d 843, 170 N.E. 2d 843, 170 N.E. 2d 843
to believe that the Court intended to void Roberson
and recognize such a common-law right merely to use a new
name is now guaranteed by the Personality Posters
54 N.E. 2d 843 (1946), 170 N.E. 2d 843 (1946), 170 N.E. 2d 843
G. Doyle, Doyle & Co. v. Postoffice, 170 N.E. 2d 843 (1946)
Dept. 1947). However, for the purposes of this motion, and
only for the purposes of this motion, it will be assumed that
a common-law right to privacy would be recognized in New
York.

The primary significance of such a common-law right of publicity is and the only reason why it was necessary to reach the question of a common-law right in the Tobin Chewing Gum case and the subsequent Idol cases -- is that the statutory right is purely personal right. It cannot be assigned (Rosemont Enterprises, Inc. v. Urban Systems, Inc., 72 Misc.2d 788 (Sup. Ct. N.Y. City, 1973)) and it does not survive the death of the individual whose name or likeness is used (Schumann v. Row 5, Inc., 35 N.Y.2d 361 (Sup. Ct.

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It would be hard to find a person in a line of business exists in New York who is indispensable, if anyone and does not provide the qualifications of a biographer such as the work involved in this job. As will be demonstrated in detail below, this subject is well established and fully disposed of in earlier chapters.

POINT 1: THE RIGHT OF PUBLICITY IS
INAPPLICABLE TO BIOGRAPHS AND OTHER
PUBLICATIONS OF PUBLIC INTEREST.

Paragraph 6 of the Complaint describes the right allegedly infringed as merely the "right of publicity." (A copy of the Complaint is Exhibit A to the Curtis moving affidavit.) It contains no reference to any infringement of the statutory right of privacy. This is understandable since, as noted above, any such right of privacy was personal to Marilyn Monroe and terminated upon her death. By contrast, Response No. 4 is plaintiff's Bill of Particulars. (Exhibit C to the Curtis affidavit) refers to both the federal cases

reorganized the entire program to make it more effective. The new program was designed to provide a more comprehensive and coordinated approach to the study of the history of the United States. The new program was designed to provide a more comprehensive and coordinated approach to the study of the history of the United States. The new program was designed to provide a more comprehensive and coordinated approach to the study of the history of the United States.

Both the Federal Circuit and the District Courts in sections 50 and 51 of the new Patent Bill, the old and new common-law claims are concerned with all the Federal Courts are limited to the new Bill. The new Bill is limited to the dissemination of information, training, to matters of public interest. This publication is of constitutional dimensions.

Paragraphs 3 and 4 of the order also refer to Section 51 of the Criminal Code, but no inference that this is an "operational error," since Section 51 has no possible bearing on the subject matter of this action.

We are concerned here with the right against commercial appropriation of name and likeness which Professor called "appropriation" and others, more recently, have referred to as the right of publicity. As noted above, this is only one of four torts falling under the "privacy" umbrella. Miss Monroe were still alive and if a purposefully fictionalized biography of her were published that would be actionable under the "false light" tort recognized as part of the law of privacy. But that is not the situation here. See Point 7, *infra*.

as the author of an advertisement. The Court has held that the First Amendment protects the right of a person to publish or disseminate information, even if the information is false or defamatory. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964). The Court has also held that the First Amendment protects the right of a person to publish or disseminate information, even if the information is false or defamatory. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964). The Court has also held that the First Amendment protects the right of a person to publish or disseminate information, even if the information is false or defamatory. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964).

"Moreover, several cases of which the publication of a newspaper is the most prominent person with the right to publish, financially even, the use of a picture, what is made accessible to the public, also for advertising purposes, in connection with the sale of a commodity, in a matter of public interest, therefore, the right of privacy is at best a limited one, and one of an advertising use, and would be subject to a valid application, when the use of a name or picture is in connection with a matter of public interest. That such use is constitutionally protected and must supersede any private pecuniary considerations is conceded even to those who take more widespread recognition of a distinct property right of publicity."

Specifically on the subject of biography, it has long been held, even as to living persons, that publication of biographical and other factual information about public figures or other matters of public interest is outside the ambit of the right of privacy. *Gidley v. F.R. Publishing Corp.*, 113 F.2d 806 (2d Cir. 1940). *Goussoroff v. Columbia Broadcasting*

NOTICE: This document contains information which is exempt from public release under E.O. 12958, Section 1.5, and is to be controlled accordingly.

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Right of privacy: 1967, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 265

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the publication of "The Day After" clearly outside the scope of the "commercial" use so contemplated by the right of publicity, and such right can have no application to the publication of letters or cables, which are usually instantly disseminated, such as a public figure's letter to a newspaper, must yield to the public interest and to must the right of publicity. Now where such conflict arises with the free dissemination of thought, ideas, newsworthy events, and matters of public interest, because of such considerations, any individual can have no exclusive rights in his own personality, and others need no consent or permission of the subject to write a biologically or a perceptible. (id. pages 7-8 (emphasis added))

Plaintiff is not unaware, of course, of the weight of law against him and seeks to evade its application by what can only be described as an exercise in semantics. The book Marilyn, according to the Complaint (¶¶ 8-9), is not a book at

"The only purpose for which a picture illustrating an article of a trade or business is not to be used for the purpose of trade or advertising within the prohibition of the statute, unless it has no real relation to the article or unless the article is used to advertise or promote the sale of the article." Murray v. New York Magazine Co., 405 F.2d 405, 409 (1969).

The Murray case, which the Court of Appeals reversed the lower court's motion for summary judgment, involved a photograph whose relationship to the story being told was far more tenuous than the photographs here. In